

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 7/26/2012

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Amendment to Purchase, Sale and Exchange Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an Amendment to Purchase, Sale and Exchange Agreement between the City of Huntsville and the Huntsville Housing Authority.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head 

Date: 7-6-12

RESOLUTION NO. 12-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Amendment to Purchase, Sale and Exchange Agreement by and between the City of Huntsville and the Huntsville Housing Authority, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "AMENDEMENT TO PURCHASE, SALE AND EXCHANGE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND THE HUNTSVILLE HOUSING AUTHORITY," consisting of twenty (20) pages, and the date of July 26, 2012 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 26th day of July, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 26th day of July, 2012.

Mayor of the City of
Huntsville, Alabama

AMENDMENT TO PURCHASE, SALE, AND EXCHANGE AGREEMENT

THIS AMENDMENT TO PURCHASE, SALE, AND EXCHANGE AGREEMENT (this "**Amendment**") is dated this ____ day of July, 2012, by and between HUNTSVILLE HOUSING AUTHORITY, a public corporation ("**HHA**"), and THE CITY OF HUNTSVILLE, an Alabama municipality ("**City**").

RECITALS

A. HHA and City are parties to that certain Purchase, Sale, and Exchange Agreement with an Effective Date of May 4, 2012 (the "**Original Purchase Agreement**") with respect to the purchase by the City of certain property located in the City of Huntsville, Madison County, Alabama (the "**Harvard ROW Property**") from HHA and the sale and exchange of certain other property located in the City of Huntsville, Madison County, Alabama by the City to HHA. *Capitalized terms used in this Amendment without definition shall have the meanings set forth in the Original Purchase Agreement.*

B. Contemporaneously with the execution and delivery of the Original Purchase Agreement, the City and HHA also entered into the Ground Lease, which contemplates the lease of the Parcel 4 Property (as hereinafter defined) by the City from HHA for a term of ninety-nine (99) years.

C. The Original Purchase Agreement and the Ground Lease were entered into in connection with the transactions contemplated in the Development Agreement, dated as of March 22, 2012 (the "**Original Development Agreement**"), among the City, Twickenham Square Partners, LLC (together with its assignee, Twickenham Square Venture, LLC, "**Twickenham**"), and Gallatin. Since that time, certain changes have occurred in the structure of the transactions and the development projects described in the Original Development Agreement and, as a consequence thereof, the Original Development Agreement has been amended and restated in the manner set forth in that certain Amended and Restated Development Agreement (the "**Amended Development Agreement**").

D. In order to facilitate the financing of commercial projects contemplated by the Amended Development Agreement described in Section 3.4 of the Original Purchase Agreement, Twickenham and Gallatin have requested that the Ground Lease be terminated and that, instead, HHA convey the Parcel 4 Property to the City in fee simple, subject to the Reversionary Interest hereafter described.

E. In order to accommodate the request of Twickenham and Gallatin, HHA and City are willing to terminate the Ground Lease and enter into this Amendment, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the Recitals, Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. At the time of execution and delivery of the Original Purchase Agreement, the parties did not have a legal description of the Harvard ROW Property. That description now exists and the parties desire to amend the Original Purchase Agreement to include that description as Exhibit "A" thereto. Accordingly, the parties hereby agree that the legal description of the Harvard ROW Property, in the form set forth as Exhibit A to this Amendment, shall be added to and incorporated into the Original Purchase Agreement, as amended hereby.

2. The parties acknowledge that the Ground Lease Property has been subjected to a subdivision and constitutes Parcel 4, according to the Final Plat of Twickenham Square Subdivision, recorded as Instrument Number 2012 042000257150 in the Office of the Judge of Probate of Madison County, Alabama. The Ground Lease Property is hereafter referred to as the "Parcel 4 Property" and all references to the Ground Lease Property contained in the Original Purchase Agreement shall henceforth be deemed to refer to the Parcel 4 Property.

3. The Purchase Agreement is hereby modified and amended to provide that, in lieu of entering into the Ground Lease of the Parcel 4 Property, HHA will sell and convey the Parcel 4 Property to City at the Closing. The purchase price for the Parcel 4 Property will be remain \$590,831.00 (consisting of cash in the amount of \$380,000.00, and the balance of the purchase price for the Parcel 4 Property, or \$210,831.00, shall be comprised of the excess value of the Exchange Property over the value of the Harvard ROW Property). Accordingly, Section 2.1.2 of the Original Purchase Agreement is hereby deleted and replaced by the provisions of this paragraph 3. All of other provisions set forth in the Purchase Agreement applicable to the sale of the "Property" shall apply with the same force and effect as to the Parcel 4 Property, subject only to the provisions of paragraphs 4 and 5 below.

4. As a condition to converting from a ground lease to a sale of the Parcel 4 Property, HHA will retain a reversionary interest (the "Reversionary Interest") with respect to the Parcel 4 Property and all improvements hereafter constructed by the City on the Parcel 4 Property (collectively, the "Parcel 4 Property") that will vest, subject to the City's Purchase Option, on the date that is ninety-nine (99) years from the Closing Date (the "Reversion Term") so that fee simple title to the Parcel 4 Property will automatically revert to the HHA at such time, subject to all easements, rights of way, and restrictions of record. At any time during the Reversion Term, City may, by written notice to HHA, elect to purchase HHA's Reversionary Interest (the "Purchase Option"), in accordance with the following provisions:

(a) The purchase price ("Purchase Price") for the Reversionary Interest shall equal the then fair market value of the Parcel 4 Property (as determined by a written appraisal of the Parcel 4 Property to be obtained by City as provided in paragraph 4(b) below).

(b) At the time that the City exercises the Purchase Option, the City shall submit to HHA a certified written appraisal prepared by an Approved Appraiser, as herein defined, of the fair market value of the Parcel 4 Property, including the then current fair market value of the Improvements, which fair market value shall be deemed the Purchase Price payable by the City to HHA for the Reversionary Interest. The appraisal shall be prepared by a licensed real estate appraiser (the "Approval Appraiser") who shall (i) have an M.A.I. designation, (ii) be principally engaged in the appraisal of

commercial real estate in the Huntsville, Madison County, Alabama area and (iii) be reasonably approved in writing by HHA prior to undertaking the appraisal contemplated by this paragraph 3(b). Notwithstanding the foregoing, in the event the parties cannot agree on an appraiser then each party shall choose its own licensed real estate appraiser who otherwise meets the standards set forth above, each appraiser shall perform a separate appraisal, and the average of the two appraisals shall constitute the fair market value of the Parcel 4 Property.

(c) If the City exercises the Purchase Option, then contemporaneously with the giving of written notice exercising the Purchase Option, the City shall specify the closing date for the release of the Reversionary Interest, but not to exceed 180 days from the written notice of the City's election to purchase the Reversionary Interest. On such closing date, HHA shall execute and deliver a release or quit claim of the Reversionary Interest in recordable form reasonably acceptable to the City.

5. HHA has been advised that Twickenham desires to purchase from the City, from and after the Closing Date, approximately .13 acres of land to be located under the northwest corner of the proposed City Parking Garage at the intersection of New Street and Pelham Avenue ("Retail Space B Land"). The City and Twickenham have agreed to close the purchase and sale of Retail Space B Land subsequent to the Closing Date, after Twickenham has completed a re-subdivision of the Parcel 4 Property to create the Retail Space B Land as a legally separate parcel. HHA covenants and agrees that it will release its Reversionary Interest in the Retail Space B Land upon payment to HHA of a release price of \$10.80 per square foot of the Retail Space B Land based upon the surveyed acreage of the Retail Space B Land. In consideration of such release price, HHA shall execute and deliver a release or quit claim of the Reversionary Interest as to Retail Space B in recordable form, contemporaneously with its receipt of such release price. The covenant of HHA contained in this Section 5 shall survive the Closing of the other transactions contemplated in the Original Purchase Agreement as amended by this Amendment.

6. In addition to the foregoing, the parties acknowledge that the provisions of Section 2.2 of the Original Purchase Agreement regarding earnest money do not apply to the transactions contemplated therein, as amended by this Amendment. Accordingly, the parties hereby agree that Section 2.2 of the Original Purchase Agreement, and Exhibit C attached thereto, are hereby deleted.

7. The title of Exhibit "E" to the Original Purchase Agreement is hereby amended to read, "FORM OF DEED TO HARVARD ROW PROPERTY", and a new Exhibit "G" thereto is hereby added to reflect the form of deed to be delivered by HHA at the Closing with respect to the Parcel 4 Property, in the form set forth as Exhibit B attached to this Amendment.

8. Upon the execution and delivery of this Amendment, the Ground Lease shall be terminated, automatically and without any further action on the part of either party thereto.

9. Except as expressly amended herein, the Original Purchase Agreement is hereby ratified and affirmed in all respects.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, this Amendment has been duly executed in multiple counterparts (each of which is to be deemed an original for all purposes hereof) by the parties hereto on the date appearing below each party's signature.

SELLER:

HUNTSVILLE HOUSING AUTHORITY

By: _____

Michael Lundy
Executive Director/CEO

Date: _____

PURCHASER:

THE CITY OF HUNTSVILLE

By: _____

Tommy Battle
Mayor

Date: _____

EXHIBIT A

LEGAL DESCRIPTION OF HARVARD ROW PROPERTY

LEGAL DESCRIPTION FOR TRACT

STATE OF ALABAMA
MADISON COUNTY

TRACT NO. 4 (RIGHT-OF-WAY)

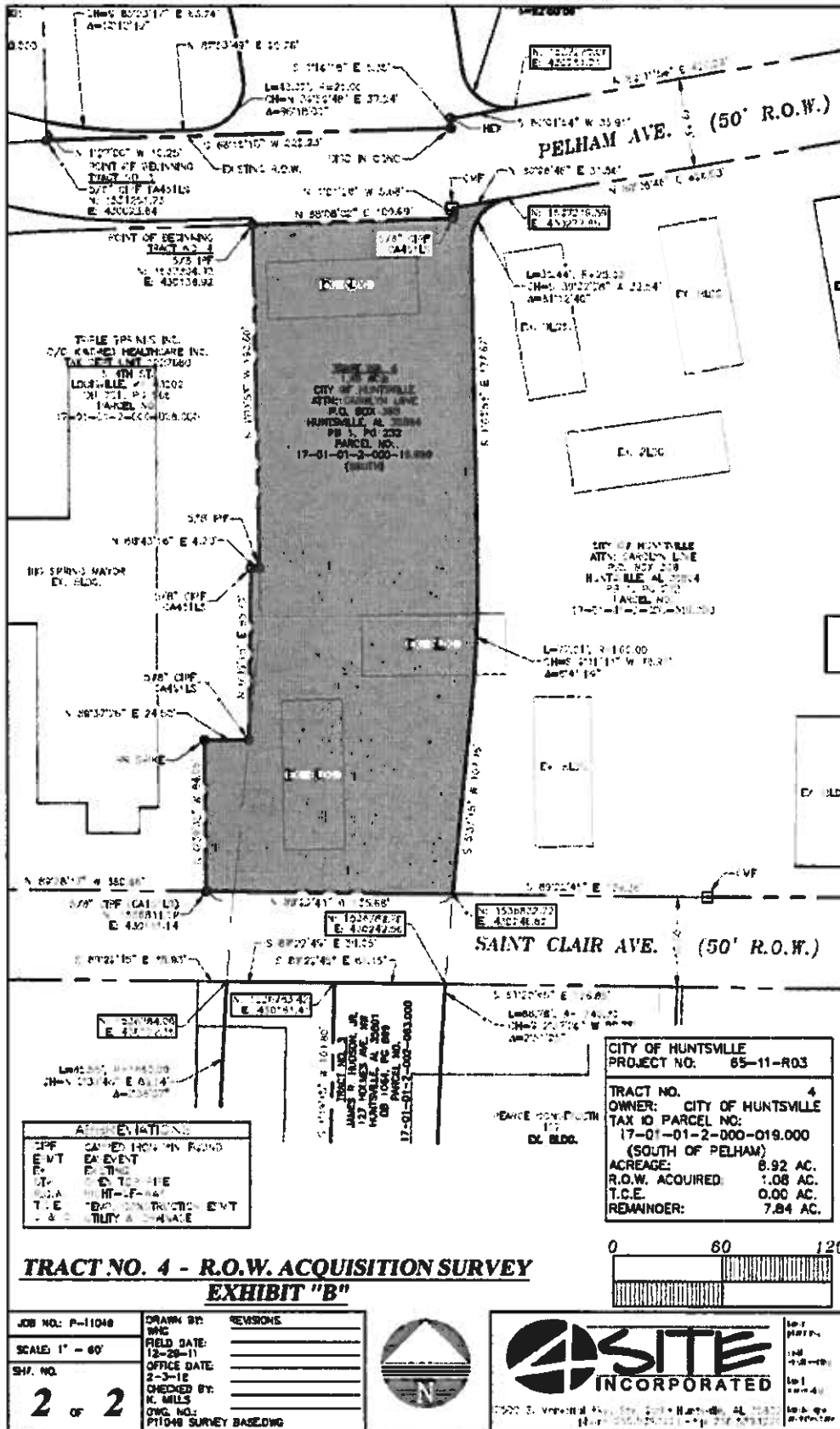
A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 1 WEST, MADISON COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8-INCH REBAR MARKING THE NORTHEAST CORNER OF BLOCK 25 OF URBAN RENEWAL PROJECT ALA R-32 BIG SPRING AREA SUBDIVISION AS SHOWN ON SHEET 2 OF PLAT RECORDED IN PLAT BOOK 8, PAGES 22-25 IN THE OFFICE OF THE JUDGE OF PROBATE, MADISON COUNTY, ALABAMA AND LYING ON THE SOUTH RIGHT-OF-WAY MARGIN OF PELHAM AVENUE, SAID POINT OF BEGINNING HAVING ALABAMA STATE PLANE COORDINATES (EAST ZONE, NAD 83) OF NORTHING: 1537204.92 AND EASTING: 430136.92; THENCE ALONG SAID MARGIN NORTH 88 DEGREES 08 MINUTES 02 SECONDS EAST, 109.99 FEET TO A 5/8-INCH CAPPED IRON PIN (STAMPED CA 451LS); THENCE NORTH 1 DEGREE 01 MINUTE 20 SECONDS WEST, 5.68 FEET TO A CONCRETE MONUMENT; THENCE NORTH 80 DEGREES 08 MINUTES 48 SECONDS EAST, 31.56 FEET TO A POINT; THENCE LEAVING SAID SOUTH RIGHT-OF-WAY MARGIN AND ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET, AN ARC LENGTH OF 35.44 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 39 DEGREES 32 MINUTES 28 SECONDS WEST, 32.54 FEET TO A POINT; THENCE SOUTH 1 DEGREE 03 MINUTES 53 SECONDS EAST, 177.67 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 660.00 FEET, AN ARC LENGTH OF 77.01 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 2 DEGREES 18 MINUTES 41 SECONDS WEST, 78.97 FEET TO A POINT; THENCE SOUTH 5 DEGREES 37 MINUTES 15 SECONDS WEST, 107.75 FEET TO A POINT LYING ON THE NORTH RIGHT-OF-WAY MARGIN OF SAINT CLAIR AVENUE; THENCE ALONG SAID MARGIN NORTH 69 DEGREES 22 MINUTES 45 SECONDS WEST, 135.68 FEET TO A 5/8-INCH CAPPED IRON PIN (STAMPED CA 451LS); THENCE LEAVING SAID RIGHT-OF-WAY MARGIN NORTH 0 DEGREES 39 MINUTES 35 SECONDS WEST, 84.05 FEET TO A RAILROAD SPIKE; THENCE NORTH 89 DEGREES 37 MINUTES 26 SECONDS EAST, 24.80 FEET TO A 5/8-INCH CAPPED IRON PIN (STAMPED CA 451LS); THENCE NORTH 0 DEGREES 39 MINUTES 18 SECONDS EAST, 95.70 FEET TO A 5/8-INCH CAPPED IRON PIN (STAMPED CA 451LS); THENCE NORTH 88 DEGREES 43 MINUTES 18 SECONDS EAST, 4.70 FEET TO A 5/8-INCH IRON PIN; THENCE NORTH 1 DEGREE 03 MINUTES 53 SECONDS WEST, 190.60 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.08 ACRES, MORE OR LESS.

SUBJECT TO: ANY EASEMENTS, RESTRICTIONS OR RIGHTS-OF-WAY WHICH MAY OR MAY NOT BE OF RECORD.

TRACT NO. 4 - R.O.W. ACQUISITION SURVEY
EXHIBIT "A"

JOB NO.: P-11049	DRAWN BY: WAG	REVISIONS:			<small>Not to be used for any other purpose without the written consent of SITE INCORPORATED.</small>
SCALE: AS NOTED	FIELD DATE: 12-29-11				
SHT. NO.	OFFICE DATE: 2-3-12				
1 of 2	CHECKED BY: K. MILLS				
DWG. NO.: P11049 SURVEY BASE.dwg					



LEGAL DESCRIPTION FOR TRACT AND EASEMENT

STATE OF ALABAMA
MADISON COUNTY

TRACT NO. 5 (RIGHT-OF-WAY)

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 1 WEST, MADISON COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8-INCH CAPPED IRON PIN (STAMPED CA 451LS) MARKING THE SOUTHEAST CORNER OF BLOCK 24 OF URBAN RENEWAL PROJECT ALA R-32 BIG SPRING AREA SUBDIVISION AS SHOWN ON SHEET 2 OF PLAT RECORDED IN PLAT BOOK 8, PAGES 22-25 IN THE OFFICE OF THE JUDGE OF PROBATE, MADISON COUNTY, ALABAMA AND LYING ON THE NORTH RIGHT-OF-WAY MARGIN OF PELHAM AVENUE, SAID POINT OF BEGINNING HAVING ALABAMA STATE PLANE COORDINATES (EAST ZONE, NAD 83) OF NORTHING: 1537251.73 AND EASTING: 430023.84; THENCE LEAVING SAID MARGIN NORTH 1 DEGREE 27 MINUTES 00 SECONDS WEST, 10.25 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 277.00 FEET, AN ARC LENGTH OF 63.88 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 85 DEGREES 23 MINUTES 47 SECONDS EAST, 63.74 FEET TO A POINT; THENCE NORTH 87 DEGREES 59 MINUTES 49 SECONDS EAST, 20.78 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET, AN ARC LENGTH OF 42.02 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 39 DEGREES 50 MINUTES 48 SECONDS EAST, 37.24 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 482.00 FEET, AN ARC LENGTH OF 273.36 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 25 DEGREES 15 MINUTES 13 SECONDS WEST, 269.39 FEET TO A POINT LYING ON THE SOUTH MARGIN OF DRAINAGE EASEMENT FOR FAGAN CREEK; THENCE ALONG SAID MARGIN NORTH 1 DEGREE 27 MINUTES 00 SECONDS WEST, 26.82 FEET TO A CAPPED IRON PIN (STAMPED 17254); THENCE NORTH 89 DEGREES 57 MINUTES 14 SECONDS EAST, 132.78 FEET TO A POINT; THENCE LEAVING SAID MARGIN AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 582.00 FEET, AN ARC LENGTH OF 284.53 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 21 DEGREES 18 MINUTES 03 SECONDS EAST, 284.53 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET, AN ARC LENGTH OF 40.51 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 53 DEGREES 32 MINUTES 38 SECONDS EAST, 38.22 FEET TO A POINT LYING ON THE NORTH RIGHT-OF-WAY MARGIN OF PELHAM AVENUE; THENCE ALONG SAID MARGIN SOUTH 80 DEGREES 01 MINUTE 54 SECONDS WEST, 35.91 FEET TO A HEX; THENCE SOUTH 1 DEGREE 10 MINUTES 18 SECONDS EAST, 5.35 FEET TO DISC IN CONCRETE; THENCE SOUTH 88 DEGREES 15 MINUTES 18 SECONDS WEST, 222.23 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.92 ACRES, MORE OR LESS.

SUBJECT TO: ANY EASEMENTS, RESTRICTIONS OR RIGHTS-OF-WAY WHICH MAY OR MAY NOT BE OF RECORD.

PERMANENT LANDSCAPE AND SIDEWALK EASEMENT NO. 1

A PERMANENT LANDSCAPE EASEMENT LOCATED IN THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 1 WEST, MADISON COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 5/8-INCH CAPPED IRON PIN (STAMPED CA 451LS) MARKING THE SOUTHEAST CORNER OF BLOCK 24 OF URBAN RENEWAL PROJECT ALA R-32 BIG SPRING AREA SUBDIVISION AS SHOWN ON SHEET 2 OF PLAT RECORDED IN PLAT BOOK 8, PAGES 22-25 IN THE OFFICE OF THE JUDGE OF PROBATE, MADISON COUNTY, ALABAMA AND LYING ON THE NORTH RIGHT-OF-WAY MARGIN OF PELHAM AVENUE, SAID POINT OF BEGINNING HAVING ALABAMA STATE PLANE COORDINATES (EAST ZONE, NAD 83) OF NORTHING: 1537251.73 AND EASTING: 430023.84; THENCE LEAVING SAID MARGIN NORTH 1 DEGREE 27 MINUTES 00 SECONDS WEST, 10.25 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 277.00 FEET, AN ARC LENGTH OF 63.88 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 85 DEGREES 23 MINUTES 47 SECONDS EAST, 63.74 FEET TO A POINT; THENCE NORTH 87 DEGREES 59 MINUTES 49 SECONDS EAST, 20.78 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET, AN ARC LENGTH OF 42.02 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 39 DEGREES 50 MINUTES 48 SECONDS EAST, 37.24 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 482.00 FEET, AN ARC LENGTH OF 273.36 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 25 DEGREES 15 MINUTES 13 SECONDS WEST, 269.39 FEET TO A POINT LYING ON THE SOUTH MARGIN OF DRAINAGE EASEMENT FOR FAGAN CREEK; THENCE ALONG SAID MARGIN NORTH 1 DEGREE 27 MINUTES 00 SECONDS WEST, 26.82 FEET TO A CAPPED IRON PIN (STAMPED 17254); THENCE NORTH 89 DEGREES 57 MINUTES 14 SECONDS EAST, 132.78 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID MARGIN NORTH 89 DEGREES 57 MINUTES 14 SECONDS EAST, 50.00 FEET TO A POINT; THENCE LEAVING SAID MARGIN SOUTH 28 DEGREES 29 MINUTES 59 SECONDS WEST, 47.79 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 582.00 FEET, AN ARC LENGTH OF 50.02 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 32 DEGREES 57 MINUTES 18 SECONDS WEST, 50.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.024 ACRES (1032 SQUARE FEET), MORE OR LESS.

SUBJECT TO: ANY EASEMENTS, RESTRICTIONS OR RIGHTS-OF-WAY WHICH MAY OR MAY NOT BE OF RECORD.

TRACT NO. 5 - R.O.W. ACQUISITION SURVEY

EXHIBIT "A"



JOB NO. P-1048	DRAWN BY: WHG	REVISIONS:			1 of 2 10/11/11 10/11/11 10/11/11 10/11/11
SCALE: AS NOTED	FIELD DATE: 12-29-11				
SHT. NO.	OFFICE DATE: 2-3-12				
1 OF 2	CHECKED BY: R. MILLS DWG. NO. P1048 SURVEY BASE.dwg				

EXHIBIT B

EXHIBIT "G"

FORM OF DEED TO PARCEL 4 LAND

EXHIBIT "G"

FORM OF DEED TO PROPERTY

THIS INSTRUMENT PREPARED BY:

SEND TAX NOTICE TO:

HUNTSVILLE HOUSING AUTHORITY

STATE OF ALABAMA)
MADISON COUNTY)

STATUTORY WARRANTY DEED WITH REVERSIONARY RIGHT

KNOW ALL MEN BY THESE PRESENTS: That in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to **HUNTSVILLE HOUSING AUTHORITY**, a public corporation organized under _____ (the "Grantor"), in hand paid by the **CITY OF HUNTSVILLE**, an Alabama municipality (the "Grantee"), the receipt and sufficiency of which are hereby acknowledged, Grantor does by these presents grant, bargain, sell and convey unto Grantee the real estate particularly described in Exhibit "A", attached hereto and made a part hereof, situated in Madison Co nty, Alabama, (the "Property"), subject to the **REVERSIONARY RIGHT** and the other matters described in Exhibit "B" attached hereto and made a part hereof.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns subject to the terms and conditions set forth on Exhibit "B" attached hereto.

IN WITNESS WHEREOF, Grantor has caused this conveyance to be executed this __ day of _____, _____.

By: _____

Its: _____

STATE OF ALABAMA)
MADISON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of _____, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, _____.

Notary Public
My Commission expires: _____

EXHIBIT "A"

Lot 4, according to the Final Plat of Twickenham Square Subdivision, recorded as Instrument No. 2012 0427000257150 in the Office of the Judge of Probate of Madison County, Alabama, as amended by that certain Surveyor's Affidavit, dated June 13, 2012, and recorded June 13, 2012, in Document Number 20120613000366350 in the Office of the Judge of Probate of Madison County, Alabama.

Exhibit "B"

Right of Reversion, Purchase Option, and Other Matters

1. **Right of Reversion.** Subject to the provisions of **Section 6** of this **Exhibit "B,"** title to the Property, together with all interests therein, including the parking garage, all buildings, structures, memorials and other improvements constructed thereon (the "**Improvements**"), shall automatically revert and shall belong to, and be the property of, HHA on the date (the "**Reversion Date**") that is the ninety-ninth (99th) anniversary of the date on which this Statutory Warranty Deed is executed by HHA and recorded in the real property records of Madison County, Alabama (the "**Effective Date**"). The period of time between the Effective Date and the Reversion Date is referred to herein as the "**Term**." Subject to the provisions of **Section 6** of this **Exhibit "B,"** upon the expiration of the Term and vesting of title to the Property and Improvements in HHA pursuant to the foregoing reversion, City shall (a) surrender to HHA possession of the Property and Improvements and any personal property that is not removed from the Property on or before the end of the Term shall be deemed conclusively abandoned by City and shall belong to HHA without the payment of any consideration therefor; and (b) execute and deliver a quitclaim or such other evidence as may be reasonably requested by HHA in order to obtain a title insurance policy insuring the HHA's fee simple interest in the Property and Improvements, subject to all easements, restrictions, and rights of way of record at that time; provided that any monetary liens shall be paid in full by Grantee prior to the end of the Term. Prior to Grantee entering into or granting any further easements, restrictions, rights of way or other encumbrances on the Property, other than easements, restrictions, rights of way or other encumbrances that expire on or before the Reversion Date, and other than Utility Encumbrances (hereinafter defined), Grantee must obtain the prior written approval of Grantor, which such approval shall not be unreasonably withheld, conditioned or delayed and, further, which such approval shall be deemed given by Grantor if Grantor has not responded in writing to the request for such approval within fifteen (15) days of delivery pursuant to Section 9 hereof. As used herein, the term "**Utility Encumbrances**" means any restrictions, easements, rights of way, or other encumbrance in favor of any utility providers or suppliers, including, without limitation, natural gas, electricity, telephone, water, sewer and telecommunications, and other communication providers or suppliers in order to provide any utility services to any improvements constructed or to be constructed on the Property.

2. **Use.** During the Term of this conveyance, the Property shall be used solely for the construction and operation of the Improvements. Grantee shall not use, or permit any person to use the Property, or any part thereof, for any other use or purpose or any improper or offensive use constituting a nuisance, and Grantee shall at all times during the Term of this conveyance comply with and cause all persons using or occupying any part of the Property to comply with all laws, ordinances, and regulations from time to time applicable thereto and all operations thereon.

3. **Payment of Taxes.** Throughout the Term, Grantee shall promptly pay and assume liability for all taxes (if any), which may be levied or assessed against the Property. Grantee shall not allow the Property to be sold for the payment of taxes and should Grantee fail to do so and should said Property be sold at a tax sale and Grantor herein have to redeem the

Property from such tax sale, any and all rights and ownership of the Property shall immediately revert to Grantor.

4 Repair. Commencing on the Commencement Date and continuing at all times thereafter during the Term, Grantee shall, or shall cause its tenants or agents, to keep and maintain the Property, all Improvements thereon and all facilities appurtenant thereto, including all landscaping thereon, in good order and repair and in a safe, clean, sanitary, orderly and attractive condition. Grantee shall cause to be made, or shall cause its tenants or agents to be made, any and all additions to or all alterations or repairs in and about the Property and the other improvements thereon that may be required by, and shall otherwise observe and comply with, all public laws, ordinances, and regulations from time to time applicable to the Property. At the end of the Term, Grantee shall insure, and shall take all action necessary to insure, that the Property is in compliance with all public laws, ordinances, and regulations that govern the Property and the Improvements located thereon, and Grantee hereby indemnifies and holds Grantor harmless from any cost, expense or other damage Grantor may suffer by virtue of the Property reverting to Grantor with a violation of such terms and conditions.

5. Environmental Compliance. Grantee and its agents and employees shall use the Property and conduct any operations thereon in compliance with all applicable federal, state, and local environmental statutes, regulations, ordinances and any permits, approvals or judicial or administrative orders issued thereunder. Grantee covenants that:

(a) No Hazardous Substances shall be generated, treated, stored or disposed of, or otherwise deposited in or located on the Property other than in accordance with applicable law;

(b) No activity shall be undertaken on the Property which would cause:

(i) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise cause the Property to be in violation of the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901, et. seq., or any similar state law or local ordinance;

(ii) a release or threatened release from any source on the Property of Hazardous Substances from the Property within the meaning of, or otherwise cause the Property to be in violation of, the Comprehensive Environmental Response Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. Section 9601, et. seq., or any similar law or local ordinance or any other environmental law; or

(iii) the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any pollution emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et. seq., or the Clean Air Act, 42 U.S.C. Section 7401, et. seq., or any similar state law or local ordinance;

(c) There shall be no substances or conditions in or on the Property which may support a claim or cause of action under RCRA, CERCLA, any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements

or under any common law claim relating to environmental matters, or could result in recovery by any governmental or private party or remedial or removal costs, natural resources damages, property damages, damages in personal injuries or other costs, expenses or damages, or could result in injunctive relief arising from any alleged injury or threat of injury to health, safety, or the environment; and

(d) There shall be no storage tanks or release or threatened releases from such tanks located on the Property.

(e) The continued violation of any one or more of the agreements set forth in this Section 5 (the "Environmental Covenants"), after written notice to the City of the violation and the passage of a ninety (90) day cure period, unless such violation is incapable of being cured within such 90 day period, in which case so long as Grantee has commenced the cure within such 90 day period, has diligently pursued such cure, and caused such cure to be completed within twelve (12) months of the date of receipt of notice from Grantor (the "Cure Period"), shall be cause for immediate reversioning of the Property into Grantor, at Grantor's option; unless Grantee shall have exercised the Purchase Option set forth in Section 6 hereof prior to the end of the Cure Period. In addition thereto, Grantee hereby indemnifies and agrees to hold Grantor harmless from any and all damages suffered by Grantor due a violation of any one or more of the Environmental Covenants.

6. Purchase Option.

(a) At any time during the Term hereof, Grantee may, by written notice to Grantor, elect to purchase the Grantor's reversionary interest (the "Purchase Option"), subject to the remaining terms and provisions of this Section 6.

(b) The purchase price ("Purchase Price") for the reversionary interest of Grantor shall equal the then fair market value of the Grantor's reversionary interest in the Property and the Improvements, as determined by a written appraisal of the Property to be obtained by Grantee as provided in Section 6(c) below.

(c) At the time that Grantee exercises the Purchase Option, Grantee shall submit to Grantor a certified written appraisal prepared by an Approved Appraiser, as herein defined, of the fair market value of the Property, including the then current fair market value of the Improvements, but not subject to or encumbered by the continued ownership interest of Grantee, which fair market value shall be deemed the Purchase Price payable by Grantee to Grantor for the reversionary interest of Grantor in the Property. The appraisal shall be prepared by a licensed real estate appraiser (the "Approved Appraiser") who shall (i) have an M.A.I. designation (or its future equivalent), (ii) be principally engaged in the appraisal of commercial real estate in the Huntsville, Madison County, Alabama area and (iii) be reasonably approved in writing by Grantor prior to undertaking the appraisal contemplated by this Section 6(c). Notwithstanding the foregoing in the event the parties cannot agree on an appraiser then each party shall choose its own licensed real estate appraiser who otherwise meets the standards set forth above, each appraiser shall perform a separate appraisal, and the average of the two appraisals shall constitute the fair market value of the Property.

(d) If Grantee exercises the Purchase Option, then contemporaneously with the giving of written notice exercising the Purchase Option, Grantee shall specify the closing date for the purchase and sale of the reversionary interest in the Property, but not to exceed 180 days from the written notice of Grantee's election to purchase the reversionary interest in the Property. On such closing date, the reversionary interest in the Property shall be conveyed by Grantor to Grantee by Quitclaim Deed.

7. Surrender of Possession by Grantee. Upon the expiration of the Term or any earlier termination thereof, Grantee shall surrender to Grantor possession of the Property. Any personal property that is not removed from the Property on or before the end of the Term shall be deemed conclusively abandoned by Grantee and shall belong to Grantor without the payment of any consideration therefore.

8. Covenants. The matters set forth in Sections 1, 2, 3, 4, 9, 10, 11 and 12 hereof are covenants between Grantor and Grantee, and are not conditions to the title conveyed hereby. In the event of a breach of any one or more of such covenants, Grantor's remedies shall be limited to a claim against Grantee for the breach thereof, but such breach shall not affect the title hereby granted and Grantor shall have no right to exercise its right of reversion prior to the Reversion Date specified in Section 1 hereof on account of any such breach.

9. Notices. All notices and requests for approval or consent required or permitted hereunder shall be in writing and shall be served on the parties hereto at the following addresses:

If to Grantor: Huntsville Housing Authority
 200 Washington Street
 P. O. Box 486
 Huntsville, Alabama 35804-0486
 Attn: Michael O. Lundy, Executive Director/CEO
 Facsimile: _____

If to Grantee: The City of Huntsville, Alabama
 Attn: City Attorney
 308 Fountain Circle
 Huntsville, Alabama 35801
 Facsimile: (256) 427-5026

Any such notices shall be deemed to have been sufficiently given or served upon any party hereto when either (a) deposited with a nationally recognized overnight courier delivery service for next day delivery, (b) deposited in the U.S. mail for first class delivery, postage prepaid and addressed as provided above, (c) sent by facsimile during business hours of any business day, or (d) delivered by personal delivery to any of the parties hereto at the addresses stated above. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

10. Insurance. At all times throughout the Term, Grantee shall cause the Property to be insured against loss or damage by fire or other casualty at replacement cost value (exclusive of the cost of foundations, excavations and footings) with extended coverage endorsement or its equivalent, with such responsible insurance companies as Grantee shall select or deem appropriate. At all times throughout the Term, Grantee shall cause to be maintained and in full force and effect, at no cost to Grantor, for the joint benefit of Grantor and Grantee, commercial general liability insurance coverage under which Grantor shall be named as an additional insured against liability for damage to property or bodily injury or death occurring on, in or about the Property or any structure thereon or any part thereof. Such insurance policy or policies shall be maintained on the minimum basis of One Million Dollars (\$1,000,000.00) aggregate coverage and Grantee shall deliver to Grantor on or before the Effective Date and on or before each anniversary of the Effective Date thereafter throughout the remainder of the Term, a certificate of each insurance carrier as to each insurance policy, together with a certified copy thereof, showing Grantor as a named additional insured thereon.

11. Indemnity. To the extent of the amount permitted under Section 11-47-190, Code of Alabama 1975, as amended, Grantee does hereby agree to indemnify, defend and agree to hold Grantor harmless from and against any and all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, suffered, paid or incurred by Grantor arising out of or in connection with (a) any penalty, damages or charges imposed or levied against Grantor or the Property by any governmental authority as a result of Grantee's failure to comply with all applicable governmental requirements and (b) any injury or damage to person or property occurring in, on or about the Property caused by any negligent, willful or deliberate act or omission of Grantee, its agents, employees, contractors, licensees and invitees. The indemnification provisions set forth in this Section are in addition to and shall not be deemed a substitute for any of the insurance requirements set forth in Section 10 above.

12. Reporting. During the Term the Grantee shall provide to Grantor, on an annual basis, (i) a report or certification reasonably acceptable to the Grantor that the Property is being used as a parking garage, (ii) an inspection report regarding the overall condition of the parking garage situated the Property, and (iii) any other reports that are required to be performed concerning the condition of the parking garage to be located on the Property under any parking lease agreements with Grantee then in effect.

IN WITNESS WHEREOF, the above terms and conditions of conveyance are acknowledged and accepted by Grantor and Grantee.

GRANTOR:

**HUNTSVILLE HOUSING AUTHORITY, a
public corporation organized under the laws of the
State of Alabama**

By: _____
Printed Name: _____
Title: _____

GRANTEE:

**CITY OF HUNTSVILLE, ALABAMA, an
Alabama municipal corporation**

By: _____
Printed Name: _____
Title: _____

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 7/26/2012

Department Contact: Peter Joffrion

Phone # 5026

Contract or Agreement: Amendment to Purchase, Sale and Exchange Agreement

Document Name: Amendment to Purchase, Sale and Exchange Agreement between the City of Huntsvill...

City Obligation Amount: NA

Total Project Budget:

Uncommitted Account Balance:

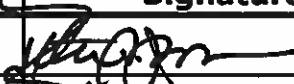

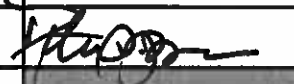
Account Number:

Procurement Agreements

<u>Select...</u>	<u>Select...</u>
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Grant-Funded Agreements

<u>Select...</u>	Grant Name:
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Department	Signature	Date
1) Originating		7-6-12
2) Legal		7-6-12
3) Finance		
4) Originating		7-6-12
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		